

BEFORE THE
Federal Communications Commission
WASHINGTON, DC

RECEIVED
MAY 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992:)
Rate Regulation)

MM Docket No. 93-215

In the Matter of)

Adoption of a Uniform Accounting)
System for Provision of Regulated)
Cable Service)

CS Docket No. 94-28

DOCKET FILE COPY ORIGINAL

OPPOSITION OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI"), by and through its undersigned counsel, hereby submits its Opposition to the "Petition by the Southern New England Telephone Company ["SNET"] For Partial Reconsideration Of Second Report And Order" ("Petition") filed by SNET on February 26, 1996.¹ TCI submits this Opposition to clarify the record of this proceeding in light of certain assertions made by SNET.

In its Petition, SNET states that "[t]he cable industry itself effectively admitted that the Commission should regulate

¹ Public Notice of the Petition was published in the Federal Register on May 1, 1996, establishing a deadline for oppositions of May 16, 1996. See Federal Register, Vol. 61, No. 85, at 19295 (May 1, 1996) and Federal Register, Vol. 61, No. 89, at 20556 (May 7, 1996).

No. of Copies rec'd
List ABCDE

0411

the price at which a price-cap regulated cable operator provides network capacity to its telephony affiliate by arguing that price-regulation of an affiliate transaction is justified when it involves 'customized or specialized. . . services.'"2 SNET then concludes, without analysis, that "[a] cable operator which allows its affiliate to use the operator's cable network to provide telephony obviously is engaged in a transaction involving 'customized or specialized services.'"3

SNET's argument too narrowly characterizes TCI's position on the application of an affiliate transaction rule to cable operators. TCI did not state that all affiliate transactions involving customized or specialized assets or services require price regulation; rather, TCI contrasted affiliate transactions of incumbent LECs with affiliate transactions of cable operators. TCI pointed out numerous distinctions between the two, including that in some instances "telcos have structured these transactions in ways that do not readily permit market-based tests,"4 and that there may be "no other purpose, other than to improperly cross subsidize, for telcos to purchase assets or services through affiliates instead of purchasing them more cheaply from a nonaffiliated entity."5 On the other hand, cable operators'

2 Petition at 5, citing Comments of TCI at 47 (July 1, 1994).

3 Petition at 5.

4 Comments of TCI at 47.

5 Id.

vertical integration decisions have been made on the basis of efficiency. TCI further argued that "the affiliate transaction rules for telephony are the result of the recognition of the 'faulty incentives' created by traditional rate-of-return regulation,"⁶ while "no such history exists for the cable industry."⁷

Thus, SNET mischaracterized TCI's position and TCI cannot, and should not, be understood to have made the admission attributed to it by SNET.

Respectfully submitted,

TELE-COMMUNICATIONS, INC.

By Michael G. Jones

Michael Hammer
Michael G. Jones

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

ITS ATTORNEYS

16 May 1996

⁶ Id. at 48, citing Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and their Nonregulated Affiliates, CC Docket No. 93-251, Notice of Proposed Rulemaking, at ¶ 42, FCC 93-453 (October 20, 1993).

⁷ Comments of TCI at 48.

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 16th day of May, 1996, copies of the foregoing Opposition of Tele-Communications, Inc. were delivered by first-class, postage pre-paid mail to the following parties:

Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Madeline M. DeMatteo
Alfred J. Brunetti
The Southern New England Telephone Co.
227 Church Street
New Haven, CT 06506


Dennette Manson